

No. 76-1613

Supreme Court U. S.

FILED

JUL 29 1977

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

LAGRETTA B. FISHER, PETITIONER

v.

UNITED STATES OF AMERICA

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1613

LAGRETTA B. FISHER, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

Petitioner, an employee of the Defense Supply Agency, Department of Defense, who was downgraded from a GS-11 to a GS-9 as part of a reduction in force, contends that she was discriminated against on the basis of race and sex.

1. Petitioner, a Contract Administrator with the Defense Supply Agency, Philadelphia, received notice on November 17, 1970, that she was to be reduced-in-force from her position as a GS-11 (Admin. Rec. 128-133). She was offered, and accepted, a position as a GS-9. She then appealed the reduction-in-force to the regional office of the Civil Service Commission (Admin. Rec. 101-122). On May 3, 1971, the Civil Service Commission sustained the agency action, stating that the reduction-in-force was effected in accordance with the Commission's retention preference regulations, 5 C.F.R. Part 351 (Admin. Rec.

56). The decision informed petitioner that she must appeal within 15 days of its receipt, as required by 5 C.F.R. 752.203. Petitioner did not appeal, however, until May 29, 1971. The Board of Appeals and Review denied petitioner's appeal on June 22, 1971, on the ground that it was not timely filed (Admin. Rec. 14). Petitioner's request for reopening and reconsideration was denied on August 19, 1971, and this was the final administrative action on petitioner's claim (Admin. Rec. 2-3).

Nearly four and a half years later, on December 30, 1975, petitioner brought suit in the United States District Court for the District of New Jersey, attacking the reduction-in-force and the 1971 action of the Civil Service Commission, and alleging a host of other abuses, some apparently occurring before 1971 and some occurring between 1971 and 1973. (See Pet. App. 7a.) The thrust of petitioner's complaint is apparently that she had been discriminated against on the basis of race and sex. The district court dismissed for want of subject matter jurisdiction (Pet. App. 9a), and the court of appeals affirmed (Pet. App. 1a-2a).

2. The courts below properly dismissed this action for want of subject matter jurisdiction. In *Brown v. General Services Administration*, 425 U.S. 820, this Court held that Section 717 of the Civil Rights Act of 1964, as added by Section 11 of the Equal Employment Opportunity Act of 1972, 86 Stat. 111, 42 U.S.C. (Supp. V) 2000e-16, provides the exclusive judicial remedy for federal employment discrimination occurring after its effective date, March 24, 1972, and that, "it was doubtful that backpay or other compensatory relief for employment discrimination was available at the time that Congress was considering the 1972 Act" (425 U.S. at 826). See also *Gnotta v. United States*, 415 F. 2d 1271 (C.A. 8); *Blaze v. Moon*, 440 F. 2d 1348 (C.A. 5). The Title VII remedy provided by the 1972 Amendments

was not available to petitioner, since the administrative proceedings on her claim with respect to a reduction-in-force were completed on August 19, 1971.¹ Petitioner has identified no alternative statute that waives sovereign immunity in employment discrimination cases so as to provide the district court with jurisdiction over her claim, and the 1972 Amendments to Title VII have rendered the question of pre-existing judicial remedies for alleged race and sex discrimination in government employment a matter without substantial continuing importance.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1977.

¹The Section 717 remedy for federal employment discrimination is retroactively available only to employees whose administrative complaints were pending on March 24, 1972. See *Sperling v. United States*, 515 F. 2d 465 (C.A. 3), certiorari denied, 426 U.S. 919; *Brown v. General Services Administration*, 507 F. 2d 1300 (C.A. 2), affirmed, 425 U.S. 820.